



MICHIGAN HEALTH & HOSPITAL ASSOCIATION

*Advocating for hospitals and the patients they serve.*

**COMMENTS OF THE MICHIGAN HEALTH & HOSPITAL ASSOCIATION  
RELATING TO THE ADVICE EXEMPTION UNDER THE LABOR-MANAGEMENT REPORTING  
AND DISCLOSURE ACT (PERSUADER RULE)**

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SEPTEMBER 21, 2011**

As the Chief Human Resources Officer of the Michigan Health & Hospital Association, I am writing to submit comments in opposition to the Department of Labor's Office of Labor-Management Standards proposed rule that would fundamentally change the interpretation of the "advice" exemption under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). This proposal is known as the "persuader rule".

**Background**

Under existing law, employers are required to report "any agreement or arrangement" where the object is "directly or indirectly, to persuade employees to exercise or not to exercise...the right to organize and bargain collectively..." (29 U.S.C. Section 433(a)(4) and (b)(1)).

However, any activities that provide "advice" rather than "persuasion" do NOT need to be reported (29 U.S.C. Section 433(c)). This advice exemption allows employers to seek the counsel of attorneys and labor law consultants to help them comply with the law. For more than 50 years, DOL has distinguished between "direct" and "indirect" contact with employees, requiring direct contacts to be reported but NOT requiring the some types of advice to be reported, including providing draft speeches to an employer, training supervisors, and drafting policies.

**Proposed "Persuader" Rule**

I oppose the proposed persuader rule for several reasons. These include:

The proposed rule is so broad that it would cover activities unrelated to traditional "persuader" activities, such as:

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Planning a response to a union campaign;

Delivering draft communications for the employer to use;

Training supervisors on how to comply with the NLRA;

Drafting or revising policies.

The expanded definition is so broad it encompasses reliance on counsel or consultants for routine HR matters. For example, assistance in developing a personnel policy or creating supervisor training on how to comply with the NLRA may be deemed "persuader" activity. This will have a negative effect on routine employee relations advice.

The expanded definition of reportable activity would require law firms, if they report as a "persuader" for one client, to disclose all fees and arrangements from all clients for all labor relations services. This may have a chilling effect on consultants choosing to provide labor relations counsel, and it may prevent employers from seeking critical guidance on how to comply with federal law.

The proposed regulation also seriously hinders the attorney-client relationship by exposing privileged communications to attack by unions. In fact, the American Bar Association has opposed the persuader rule to protect client confidentiality.

